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INFINITYAUTO INSURANCE COMPANY
7

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 TARA ANN SHERWIN,
11 Plaintiff,

Case No. 2:11-cv-00043-JCM-LRL

12 vs.

13 INFINITY AUTO INSURANCE COMPANY,
14 DOES I – X, and ROE CORPORATIONS I –
X, inclusive,
15 Defendants.
16

17 **REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE**
18 **(LETTER ROGATORY)**
19

20 The United States District Court for the District of Nevada presents its
21 compliments to the Ontario Superior Court of Justice and requests international
22 assistance to obtain evidence to be used in a civil proceeding before this Court in the
23 above-captioned matter.

24 **I. REQUEST**

25 This Court requests the assistance described herein as necessary in the
26 interests of justice. The assistance requested is that the Ontario Superior Court of
27 Justice compel the appearance of the below-named individual to give evidence, under
28

LETTER ROGATORY

1 oath, as to his personal knowledge of facts that are relevant to the issues in the above-
2 captioned civil matter.

3
4 **II. IDENTITY AND ADDRESS OF PERSON TO BE EXAMINED**

5 The name and address of the individual to be examined:

6 Biko Beauttah
7 551 Bloor Street West
8 Toronto, Ontario, Canada M5S 1Y6

9 **III. NATURE OF THE PROCEEDINGS AND SUMMARY OF THE FACTS**

10
11 **A. THE PENDING CIVIL PROCEEDING**

12 This is a civil suit pending before the United States District Court for the District
13 of Nevada. It arises from a motor vehicle accident that occurred in Las Vegas, Nevada
14 on March 31, 2009 in which Plaintiff claims she injured her back and/or neck.

15 Plaintiff already settled a portion of her personal injury claim for \$15,000.00, the
16 bodily injury policy limit, with the opposing vehicle's insurance provider. Plaintiff now
17 claims that she is entitled to additional compensation pursuant to the underinsured
18 motorist coverage provided by the automobile insurance issued by the defendant,
19 Infinity Auto Insurance Company (Hereinafter "Infinity"). Infinity offered to pay Plaintiff
20 for her the undisputed amount of her remaining damages and she accepted this money
21 from Infinity. Infinity also offered to pay Plaintiff's future medical bills as she incurred
22 them, but Plaintiff rejected this offer and seeks to be compensated for and in advance of
23 an indefinite future surgery.

24 **1. Brief synopsis of Plaintiff's Injury and Treatment**

25 Plaintiff's treatment was primarily chiropractic in nature, though she did undergo
26 an MRI which showed a disk extrusion in her spine. While her medical doctor stated
27 she would likely need back surgery for this condition, another medical doctor states the
28 condition is not a result of the auto accident and is instead degenerative in nature.

1 Regardless, on July 14, 2009, less than four months after the accident, Plaintiff told her
 2 doctor that she was not going to have the back surgery; that she was feeling better, had
 3 no radicular or myelopathic symptoms and had returned to work as a professional
 4 dancer. In October 2009, seven months after the accident, Plaintiff told her chiropractor
 5 that she had no lower back pain and only slight neck pain that seemed to resolve even
 6 more in light of her return to work.

7 Despite her claim that she is unable to continue performing as she did prior to the
 8 accident due to pain and/or disability, the evidence suggests that Plaintiff has been
 9 performing her strenuous dance routines since at least July 14, 2009 – four months
 10 after the accident. Plaintiff's ability to perform her contortionist-like dance routines on a
 11 regular basis contradicts the contention that she continues to experience pain and/or
 12 physical limitations as a result of this accident.

13 2. Synopsis of Plaintiff's Complaint

14 Plaintiff's civil complaint alleges that Infinity breached its contractual duties under
 15 subject automobile insurance policy. The complaint alleges that Infinity breached the
 16 implied covenant of good faith and fair dealing and violated Nevada's Unfair Claims
 17 Practices Act.

18 The complaint prays for general and special damages each and for punitive
 19 damages in an amount to be determined at trial. Plaintiff submitted a computation of
 20 damages seeing damages in the amount of \$11,817.00 plus damages for the
 21 aforementioned, indefinite future back surgery, totaling in excess of \$164,468.00.

22 B. KNOWLEDGE OF THE PERSON TO BE EXAMINED

23 During the 2009 Toronto International Film Festival in September of 2009, Biko
 24 Beuttah attended an event held at Jezabel Burlesque Jazz Club in Toronto, Canada
 25 where Plaintiff was performing. Plaintiff performed a physically demanding, solo
 26 burlesque routine the night Mr. Beuttah attended the club. Mr. Beuttah videotaped
 27 Plaintiff's live burlesque performance which shows Plaintiff moving, bending, and
 28 contorting her body into strenuous positions without any signs of pain or limitation. Mr.

1 Beuttah later uploaded and published this video on the internet on YouTube. This
 2 video contradicts Plaintiff's claim that she is unable to perform as a result of the subject
 3 auto accident. Mr. Beuttah possesses critical evidence germane to key issues of the
 4 pending civil litigation. Based on his personal knowledge of facts and events, Mr.
 5 Beuttah can provide the proper legal foundation for this video so that it can be entered
 6 into evidence and used at trial in the pending civil litigation. While Defendant has
 7 entered static photographs of Plaintiff into evidence, the video for which only Mr.
 8 Beuttah can lay the proper foundation, has unique evidentiary value. He can testify as
 9 to his personal knowledge of the video's authenticity, the location and date on which it
 10 was taken, and other specifics regarding Plaintiff's performance in September 2009.

11 Plaintiff's performance at the September 2009 Toronto International Film Festival
 12 is pivotal in this civil action because Plaintiff claims she was unable to continue dancing
 13 after the accident in the same manner she did prior to the accident. Mr. Beuttah's
 14 video of Plaintiff's burlesque performance less than six months after the accident is
 15 admissible in the civil proceedings to rebut Plaintiff's claims of ongoing disability and
 16 physical limitations she claims to be experiencing as a result of the subject auto
 17 accident. The video demonstrates that Plaintiff was limber, flexible, and not showing
 18 any signs of physical limitation on the date of the performance.

19 **C. EVIDENCE TO BE OBTAINED**

20 The evidence to be obtained consists of testimony for use in the trial in the civil
 21 proceedings of this case. This Court respectfully requests that a Canadian judicial
 22 authority compel the persons identified above to appear and be deposed, under oath,
 23 as his personal knowledge regarding facts that are vital and germane to the pending
 24 civil action. The questions asked of this witness will be limited in scope and calculated
 25 to elicit only the evidence described herein. The witness shall also be asked to produce
 26 the original, unedited video he recorded in September 2009, as well as any additional
 27 digital, photographic, or similar images in his possession or control that were taken or
 28 recorded by the him during the same event.

1 IV. SPECIAL PROCEDURES

2 This Court respectfully requests that the Ontario Superior Court of Justice follow
3 the following special procedures.

4 A. REQUIREMENTS THAT THE EVIDENCE BE GIVEN ON OATH OR
5 AFFIRMATION AND SPECIFIC FORMAT TO BE USED

6 The examinations of the person listed above should be taken under oath before
7 (1) a secretary of embassy, consul general, vice-consul or general agent of the United
8 States of America or any other officer authorized to administer oaths under the laws of
9 the United States of America or Canada, or (2) before a person appointed by the Court
10 and empowered to administer oaths and take testimony.

11 This Court further requests that you require the testimony given during eh
12 deposition be given under the following oath: "I, Biko Beattah, do swear (or affirm) that
13 the testimony I am about to give is the truth, the whole truth, and nothing but the truth,
14 so help me God."

15 In the event that the laws of Canada does not permit the swearing of an oath by
16 particular witnesses, the duly appointed office shall make inquiry of such witness to
17 ensure that he understands the gravity of the procedure and affirms that his statement
18 will be true and correct in all respects.

19 B. OTHER SPECIAL METHODS OR PROCEDURES TO BE FOLLOWED

20 Except to the extend that such rules are incompatible with the internal laws of
21 Canada, the examination shall be taken under the Federal Rules of Civil Procedure,
22 provided, however, that the scope and manner of the examination and cross-
23 examination, if any, at the deposition shall be in accordance with the Federal Rules of
24 Evidence as would apply during a civil trial before this Court.

25 The examination shall be taken before a commercial stenographer and a
26 verbatim transcript shall be produced.

27 The Court further requests that counsel for Plaintiff and Defendant be notified of
28 the date, time and place of the deposition and that they be allowed to appear at the

1 deposition and participate by asking questions of the deponent. If the laws of Canada
2 do not allow foreign attorneys to appear before the appropriate judicial body of Canada,
3 this Court requests that local counsel in Canada be allowed to appear at the deposition
4 and participate by asking questions of the deponent.

5 **C. REQUEST FOR NOTIFICATION OF THE TIME AND PLACE FOR**
6 **EXAMINATION OF THE WITNESS**

7 This Court respectfully requests that the following individuals be notified of the
8 time and place of the examination of the witnesses and supplies the identity and
9 address of the persons to be notified.

10 **Please send notice of the time and place of the examination of the witness**
11 **to:**

12 Honorable James C. Mahan
13 United States District Court Judge
14 United States District Court for the District of Nevada
15 333 Las Vegas Boulevard South
16 Las Vegas, Nevada 89101
17 U.S.A.

18 Corey M. Eschweiler, Esq.
19 Glen J. Lerner & Associates
20 4795 S. Durango Boulevard
21 Las Vegas, Nevada 89147
22 U.S.A.

23 Michael C. Mills, Esq.
24 Mills & Associates
25 3650 N. Rancho Drive, Suite 114
26 Las Vegas, Nevada 89130
27 U.S.A.

28 **Please also send the original verbatim transcript of the deposition to:**

Clerk of the Court
United States District Court for the District of Nevada
333 Las Vegas Boulevard South
Las Vegas, Nevada 89101
U.S.A.

///

1 and

2 Michael C. Mills, Esq.
3 Mills & Associates
4 3650 N. Rancho Drive, Suite 114
5 Las Vegas, Nevada 89130
6 U.S.A.

7 **V. RECIPROCITY**

8 The United States District Court for the District of Nevada appreciates the
9 Ontario Superior Court of Justice's assistance in obtaining evidence in this matter. This
10 Court is willing to provide similar assistance to the appropriate judicial authorities of
11 Canada should a judicial authority in Canada so require.

12 **VI. REIMBURSEMENT FOR COSTS**

13 Defendant and/or its counsel are willing to reimburse the Ontario Superior Court
14 of Justice for costs incurred in executing the United States District Court for the District
15 of Nevada's Letter Rogatory. This cost should not exceed \$500.00. Please contact the
16 United States District Court for the District of Nevada before this amount is exceeded.

17 It is so Ordered.

18 DATED: This 20th day of September 2011.

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20 _____
21 Lawrence R. Leavitt
22 United States Magistrate Judge
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